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Sealing of Juvenile Court Records

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I. INTRODUCTION

Rehabilitation of lawbreakers has traditionally been among the goals sought to be attained by the judicial process, but nowhere has greater fealty been paid to this elusive lord than in the philosophy of the juvenile court.[1] The rehabilitative ideal[2] runs deep, both theoretically and traditionally, in juvenile court philosophy. The court as *parens patriae* encounters the youthful offender as a wayward child in need of the fatherly advice of a benevolent judge.[3] Such was the view of its founders[4] and, despite recent decisions that have challenged the court's procedure,[5] the juvenile court today continues to be, at least in theory, an instrument of rehabilitation.

Rehabilitation of juvenile offenders is a broad field with uncertain boundaries. The juvenile court in its disposition order takes the first and perhaps most important step by consigning the youth to one of a variety of forms of treatment, from counseling to incarceration.[6] This done, the authority of the court yields to other agencies or departments of the state.[7] Thus, the bulk of the rehabilitative process lies beyond the control of the court itself. In regard to the records of the juvenile court cause, however, the court retains a degree of control over the rehabilitative process. Article 11 of the Minnesota Juvenile Court Rules provides that when the child reaches age 21, or perhaps earlier, his record of delinquency will be sealed absolutely, never

1. *See* Kent v. United States, 383 U.S. 541, 554 (1966); PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND AD. OF JUSTICE, TASK FORCE REPORT, JUVENILE DELINQUENCY AND YOUTH CRIME 7 (1967) [hereinafter cited as TASK FORCE]; Paulsen, *The Juvenile Court and the Whole of the Law*, 11 WAYNE L. REV. 597 (1965).

2. Allen, *Criminal Justice, Legal Values and the Rehabilitative Ideal*, 50 J. CRIM. L.C. & P.S. 226 (1959), *cited in* M. PAULSEN & S. KADISH, CRIMINAL LAW AND ITS PROCESSES 89 n.*m* (1962).

3. *See* Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).

4. TASK FORCE, *supra* note 1, at 2-3. Contemporary commentators were also fond of drawing analogies to the field of medicine, seeing the judge as a doctor treating the pathology of delinquency. *See* Paulsen, *supra* note 1, at 597.

5. *E.g.*, *In re* Gault, 387 U.S. 1 (1967).

6. *See* MINN. STAT. § 260.185 (1967). A juvenile court cannot directly incarcerate a delinquent child, but must first transfer custody to the Youth Conservation Commission. *See* MINN. STAT. § 260.185 (1) (d) (1967). *See* note 92 *infra*.

7. Since probation officers are officers of the court, juveniles placed on probation remain subject to the court to a certain extent.

to be revealed to any person, including courts, police or correctional authorities. This Note will first examine the possible effects such a procedure may have on rehabilitation. Certain problems, such as the availability of police records and the use of juvenile court records in subsequent judicial proceedings, will be discussed and the likely success of the Rules in solving these problems will be evaluated.

II. THE REHABILITATIVE IDEAL

Rehabilitation is intended to serve both the child and society by enabling the child to lead a lawful and fruitful life, to realize his own abilities and to become a useful member of society.[8] The first step in this process is likely to be society's willingness to accept the ex-offender as a person, despite his past antisocial conduct.[9] While the adjudication of delinquency is itself a form of rejection by society,[10] a much more deleterious effect arises from the continuing stigma of the child's record.[11]

Part of this stigma is caused by the child's knowledge that a public record of his past unlawful conduct exists. This alone can be a significant factor in reinforcing his self-image of worthlessness, thus stimulating continued delinquent behavior.[12] But in addition to this, the fact that others know, or may know, of his past offense can defeat the social integration which is the goal of juvenile rehabilitation.[13] For example, as a

8. *See* Lipsitt, *Due Process as a Gateway to Rehabilitation in the Juvenile Justice System*, 49 Bos. U.L. Rev. 62, 63 (1969).

9. *See* Grygier, *The Concept of the "State of Delinquency" and Its Consequences for Treatment of Young Offenders*, 11 Wayne L. Rev. 627, 645-48 (1965).

10. Grygier, *The Concept of "The State of Delinquency"—An Obituary*, 18 J. Legal Ed. 131, 137 (1965).

11. *In re* Gault, 387 U.S. 1, 23-24 (1967); Winburn v. State, 32 Wis. 2d 152, 162, 145 N.W.2d 178, 183 (1966); *In re* Contreras, 109 Cal. App. 2d 787, 789-90, 241 P.2d 631, 633 (1952); Jones v. Commonwealth, 185 Va. 335, 341-42, 38 S.E.2d 444, 447 (1946). *See also* Gough, *The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status*, 1966 Wash. U.L.Q. 147, 170-71 (1966); Lipsitt, *supra* note 8, at 69; Task Force, *supra* note 1, at 16; Lemert, *The Juvenile Court—Quest and Realities*, in Task Force, *supra* note 1, at 91, 92-93.

12. Lemert, *supra* note 11, at 93; Wheeler, Cottrell & Romasco, *Juvenile Delinquency—Its Prevention and Control*, in Task Force, *supra* note 1, at 409, 417; Lipsitt, *supra* note 8, at 68-69; Rappeport, *Some Legal Aspects of Juvenile Court Proceedings*, 46 Va. L. Rev. 908, 909 (1960).

13. Task Force, *supra* note 1, at 39; Gough, *supra* note 11, at 147-48; Rappeport, *supra* note 12, at 909-10; Wheeler, Cottrell & Romasco, *supra* note 12, at 424.

result of disclosure of his juvenile record, the youth is often barred from employment, or is limited to menial jobs lacking in responsibility and fulfillment.[14] While other consequences, such as ineligibility for certain Armed Forces opportunities may arise,[15] discrimination in employment opportunities is by far the most significant, due to the central importance of a job in determining economic advancement and self-respect.[16] Employment discrimination also reinforces the juvenile's feelings of worthlessness and inability and consequently it contributes to delinquency[17] not only in precluding ex-offenders from employment, but in weakening whatever desire they may have to adhere to a lawful life.

To protect the child against the adverse effects of stigmatization, juvenile court laws have from their inception[18] provided that juvenile proceedings shall be civil rather than criminal,[19] and that the records of the proceedings shall be confidential,[20] that is, the records shall not be disclosed to outsiders without a prior court order. The first has proved to be a change in word only, with no easing of the stigma of conviction.[21] The second has presented no real barrier to the employer who

14. *See* note 11 *supra*. *See also* Burns & Stern, *The Prevention of Juvenile Delinquency*, in TASK FORCE, *supra* note 1, at 353, 385.

15. *See* Lemert, *supra* note 11, at 92.

16. *See, e.g.*, TASK FORCE, *supra* note 1, at 16.

17. Rappeport, *supra* note 12, at 910.

18. *See* TASK FORCE, *supra* note 1, at 3; Paulsen, *The Changing World of Juvenile Law—New Horizons for Juvenile Court Legislation*, 40 PA. B. ASS'N Q. 26, 27 (1968); Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 784 (1966).

19. *See, e.g.*, MINN. STAT. § 260.211(1) (1967).

> To get away from the notion that the child is to be dealt with as a criminal; to save it [*sic*] from the brand of criminality, the brand that sticks to it for life; to take it in hand and instead of first stigmatizing and then reforming it, to protect it from the stigma, this is the work which is now being accomplished . . . .

Mack, *supra* note 3, at 109.

20. *See, e.g.*, MINN. STAT. § 260.161(2) (1967): "[N]one of the records of the juvenile court, including legal records, shall be open to public inspection or their contents disclosed except by order of the court." *Compare* MINN. STAT. § 260.211(2) (1967).

21. One commentator has called the distinction not only ineffectual, but "highly misleading sophistry," confusing what juvenile courts are with what they should be. Tappan, *Unofficial Delinquency*, 29 NEB. L. REV. 547, 548-49 (1950). *See also In re* Contreras, 109 Cal. App. 2d 787, 241 P.2d 631 (1952), in which the court said that a statute providing that a finding of delinquency is not deemed a conviction of crime is "a legal fiction, presenting a challenge to credulity and doing violence to reason." *Id.* at 789, 241 P.2d at 633. *Accord*, Jones v. Commonwealth, 185 Va. 335, 38 S.E.2d 444 (1946).

seriously desires information about an employee or even an applicant.[22] The breakdown of confidentiality is not solely the fault of the juvenile court. It is also attributable to the fact that even a minimal standard of confidentiality does not apply to police records.[23] In addition, police records frequently do not reflect the subsequent disposition of the child.[24] Hence, even children who are not referred to juvenile court by the police, or whose causes are dismissed by the court, or who are not adjudicated delinquent, retain a police record in most instances.[25] The police record, rather than the court record, is the one most likely to be perennially troublesome to the juvenile.[26]

The harm inherent in the availability even of court records is compounded by the fact that the records are not always accurate, perhaps due to what one commentator has called the "cumbersome and archaic" procedures used in compiling and storing information.[27] Moreover, released information consisting merely of the statutory definition of the offense can be misleading. For example, "theft" could include the shoplifting of a trivial item. Even the definitions of delinquency are so amorphous that in many cases the delinquent nature of a child's acts may depend as much on the attitude of the police or the parents as on the acts themselves.[28]

22. TASK FORCE, *supra* note 1, at 54; Lemert, *supra* note 11, at 93; Burns & Stern, *supra* note 14, at 385; Note, *supra* note 18, at 784-85; G. O'CONNOR & N. WATSON, JUVENILE DELINQUENCY AND YOUTH CRIME: THE POLICE ROLE 60 (1965). The medical community is equally vulnerable to charges of laxity in observing confidentiality. *See, e.g.*, Malmquist, *Problems of Confidentiality in Child Psychiatry*, 35 AM. J. ORTHOPSYCHIATRY 787, 788 (1965).

23. *Cf.* Note, *supra* note 18, at 784-85. This is not to imply that court records are in fact always confidential. *See id.* at 800. The Wisconsin Supreme Court recently observed that the failure of confidentiality is "common knowledge." Winburn v. State, 32 Wis. 2d 152, 162, 145 N.W.2d 178, 183 (1966).

24. 2 CALIFORNIA GOVERNOR'S SPECIAL STUDY COMM'N ON JUVENILE JUSTICE, A STUDY OF THE AD. OF JUVENILE JUSTICE IN CALIFORNIA 110 (1960) [hereinafter cited as 2 CALIFORNIA GOVERNOR'S COMM'N]; G. O'CONNOR & N. WATSON, *supra* note 22, at 60.

25. 2 CALIFORNIA GOVERNOR'S COMM'N, *supra* note 24, at 110; G. O'CONNOR & N. WATSON, *supra* note 22, at 60.

26. 2 CALIFORNIA GOVERNOR'S COMM'N, *supra* note 24, at 110.

27. Vinter, *The Juvenile Court as an Institution*, in TASK FORCE, *supra* note 1, at 84, 88. *See* note 112 *infra*.

28. Lemert, *supra* note 11, at 93. In Minnesota, a delinquent child is one who has violated any law or ordinance (except traffic), or who is "habitually truant" from school, or who is "uncontrolled" by his parents because he is "wayward or habitually disobedient," or who "habitually deports himself in a manner that is injurious or dangerous

Data is not presently available to test the validity of the hypothesis underlying the nondisclosure of juvenile records, namely, that nondisclosure will facilitate rehabilitation through the avoidance of stigma.[29] However, there is data from which the benefit of nondisclosure may be inferred. The extensive longitudinal research into the adult lives of former delinquents by the Gluecks[30] indicates that many ex-offenders "turn the corner" from antisocial conduct in their twenties. Specifically, it was found that 22.6 percent who had offended prior to age 17 did not reoffend before age 25, and 48.2 percent committed no crime between the ages of 25 and 31.[31] These figures confirm the belief in the importance of "delayed maturation" in rehabilitation.[32] The significance of these conclusions for purposes of record sealing is that they tend to show that the prospects for rehabilitation are most promising when former delinquents are in their twenties, a period when a person is young enough so that his attractiveness to a prospective employer, in terms of physical ability, training capability and longevity, is greatest. It is at this point that the availability of a previous record could thwart the ex-offender's chances for employment and thus hinder the emerging maturation process. However, if the previous record is not available, the chances of employment are increased, the maturation process is reinforced and the chances of future

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to himself or others." MINN. STAT. § 260.015(5) (1967). This definition is difficult to distinguish from that of the neglected child. *See* note 36 *infra*.

29. This premise has apparently not even been seriously questioned. Arguments against confidentiality or sealing focus on the balancing of interests between disclosure and nondisclosure and conclude that whatever benefits nondisclosure may confer are outweighed by society's "right to know." *See, e.g.*, 2 CALIFORNIA GOVERNOR'S COMM'N, *supra* note 24, at 109-10; Brucker, *The Right to Know About Juvenile Delinquents*, 15 JUV. CT. JUDGES J. 16 (Summer, 1964).

30. S. GLUECK & E. GLUECK, DELINQUENTS AND NONDELINQUENTS IN PERSPECTIVE (1968).

31. *Id.* at 147-52. The reduction was more marked in serious offenses. If the quoted figures are included with those who were occasionally convicted of minor offenses, offenses against the public order, violation of conditions of probation or parole and simple assault, the figures are 37.9 percent in the 17-25 age bracket, and 67.4 percent in the 25-31 age bracket. *Id.* at 151.

32. *Id.* In an earlier work, the Gluecks concluded that the decrease in unlawful activity occurs not at a chronological age, but at the conclusion of a certain length of time following the onset of delinquent behavior. S. GLUECK & E. GLUECK, JUVENILE DELINQUENTS GROWN UP 105 (1940). This decrease was attributed to a delayed maturation process. *Id.*

offense are minimized. Rehabilitation, in other words, has effectively begun.

Though the positive effect of employment on rehabilitation is widely noted,[33] the Gluecks' research indicates a susceptibility to rehabilitation during the early adult years, which can be exploited by employment. Insofar as nondisclosure of a youth's record encourages his employment, the rehabilitative protential of nondisclosure seems significant. While nondisclosure has historically been an integral part of the juvenile court philosophy, the juvenile has been betrayed by the false protection of confidentiality in practice. The Minnesota Juvenile Court Rules, while adhering to the principle of confidentiality, provide for its administration with considerably more vigor than has heretofore been known in Minnesota or in most other states.[34]

III. ANALYSIS OF ARTICLE 11

A. Neglect and Dependency Causes Not Included

At the outset, it must be noted that the sealing provisions of Article 11 apply only to the records pertaining to a delinquency cause.[35] Records pertaining to neglect[36] or dependency[37]

33. *See, e.g.*, Freedman & Cohen, *Delinquency, Employment and Youth Development*, in Readings in Delinquency and Treatment 17 (R. Schasre & J. Wallach eds. 1965); Task Force, *supra* note 1, at 54-56; Burns & Stern, *supra* note 14, at 378; Wheeler, Cottrell & Romasco, *supra* note 12, at 416-17.

34. Despite increased concern in recent years with the problem of the juvenile offender, sealing statutes are still the exception. Only nine states now have statutes which purport to seal records. Alaska Stat. § 47.10.060(e) (1962); Ariz. Rev. Stat. Ann. § 8-238 (1956); Cal. Welf. & Inst'ns Code § 781 (West Supp. 1966); Ind. Ann. Stat. § 9-3215a (Burns Supp. 1969); Kan. Stat. Ann. § 38-815(h) (1964); N.J. Rev. Stat. § 2A:4-39.1 (Supp. 1968); Utah Code Ann. §§ 55-10-117, 55-10-118 (Supp. 1969); Va. Code Ann. § 16.1-193 (1960); Vt. Stat. Ann. tit. 33, § 665 (Supp. 1969). The statutes in two of these states, however, are so seriously qualified as to cast considerable doubt on their value in juvenile rehabilitation. Alaska Stat. § 47.10.060(e) (1962) applies only if the juvenile is tried as an adult, while N.J. Rev. Stat. § 2A:4-39.1 (Supp. 1968) emasculates the protection by excepting from sealing many offenses likely to be committed by juveniles, including robbery, burglary, carrying concealed weapons and rape.

Two more states have statutes providing for the destruction of social reports, but leave the question of the record itself unanswered and presumably no sealing is allowed. Mo. Rev. Stat. § 211.321 (1962); Wash. Rev. Code §§ 13.04.230, 13.04.250 (Supp. 1967).

35. The juvenile court has "original and exclusive" jurisdiction in any cause where the child is alleged to be delinquent, neglected, dependent or a traffic offender. Minn. Stat. § 260.111(1) (1967). While traffic offender causes, like neglect and dependency causes, are not in-

causes are not subject to sealing, and therein lies the gravest shortcoming of Article 11. One may argue, of course, that sealing is essentially a means of rehabilitation and a neglected or dependent child needs no rehabilitation, for he has not offended. While technically correct, such a viewpoint overlooks the realities of public reaction to children who have been the subject of juvenile court causes for whatever reason. The public often fails to appreciate the distinction between delinquent children and neglected or dependent children, and assumes that any child who comes in contact with the juvenile court is a

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cluded in Article 11, the stigma arising from traffic violations is probably nugatory.

36. "Neglected child" means a child:
(a) Who is abandoned by his parent, guardian, or other custodian; or
(b) Who is without proper parental care because of the faults or habits of his parent, guardian, or other custodian; or
(c) Who is without necessary subsistence, education or other care necessary for his physical or mental health or morals because his parent, guardian or other custodian neglects or refuses to provide it; or
(d) Who is without the special care made necessary by his physical or mental condition because of [*sic*] his parent, guardian, or other custodian neglects or refuses to provide it; or
(e) Whose occupation, behavior, condition, environment or associations are such as to be injurious or dangerous to himself or others; or
(f) Who is living in a facility for foster care which is not licensed as required by law, unless the child is living in the facility under court order; or
(g) Whose parent, guardian, or custodian has made arrangements for his placement in a manner detrimental to the welfare of the child or in violation of law; or
(h) Who comes within [the provisions defining delinquency], but whose conduct results in whole or in part from parental neglect.

MINN. STAT. § 260.015(10) (1967), *as amended*, (MINN. SESS. L. SERV. ch. 503, § 2 (1969)).

37. "Dependent child" means a child:
(a) Who is without a parent, guardian, or other custodian; or
(b) Who is in need of special care and treatment required by his physical or mental condition and whose parent, guardian, or other custodian is unable to provide it; or
(c) Whose parent, guardian, or other custodian for good cause desires to be relieved of his care and custody; or
(d) Who is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of his parent, guardian, or other custodian.

MINN. STAT. § 260.015(6) (1967), *as amended*, (MINN. SESS. L. SERV. ch. 503, § 1 (1969)). The 1969 amendments reclassified a child "[w]ho is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of his parent, guardian, or other custodian" from "neglected" to "dependent."

delinquent,[38] and hence a criminal.[39] There is a cruel irony in the fact that the Rules allow an ex-offender to discard his record, but do not allow a victim of parental neglect or inability to do the same. This inconsistency is compounded by the fact that even a child who meets the statutory definition of delinquency may be made the subject of a neglect cause if his conduct results wholly or partially from parental neglect.[40]

B. THE STRUCTURE OF THE RULES

Article 11 sets forth four basic rules which govern the confidentiality, sealing and destruction of juvenile records. Juvenile records, within the Article's language, include nearly all documents relevant to a delinquency cause.[41] Included are not only records of the court but all documents that pertain to the cause and that are maintained by the state or any subdivision thereof, including state and local police.[42] However, records of traffic offenses and records maintained by the Youth Conservation Commission[43] are excepted.

Records, once sealed, are sealed absolutely; they are not to be disclosed "for any purpose to any person."[44] The historical and less sweeping concept of confidentiality is preserved for unsealed records. Unsealed records may be disclosed, but only pursuant to a court order, which may issue upon a determination that disclosure is "required for the best interests of the child, the public safety or the functioning of the juvenile court system."[45] The Rules attempt to clarify one aspect of confidentiality by specifying persons to whom unsealed records may be disclosed: juvenile judges and members of the juvenile court

38. 1 CALIFORNIA GOVERNOR'S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE, RECOMMENDATIONS FOR CHANGES IN CALIFORNIA'S JUVENILE COURT LAW 19 (1960). *See* Gough, *Sealing of Juvenile Records: A Clean Slate?*, 3 SANTA CLARA LAW. 119, 120-21 (1963).

39. *See* text accompanying note 21 *supra.*

40. MINN. STAT. § 260.015(10) (1967), *as amended,* (MINN. SESS. L. SERV. ch. 503, § 2(h) (1969)) quoted in note 36 *supra.* Presumably such an option was originally designed to alleviate the stigma that would otherwise attach to a child whose delinquency was a result of parental neglect. Under the Rules, such a child is now more likely to be stigmatized than the child whose delinquency is not caused by neglect.

41. RULES OF PROCEDURE FOR JUVENILE COURT PROCEEDINGS IN THE MINNESOTA PROBATE-JUVENILE COURTS 11-1(2) (1969), *as amended,* (Supp. Sept. 1969) [hereinafter cited as MJCR].

42. *See* text accompanying note 90 *infra.*

43. *See* note 92 *infra.*

44. MJCR 11-2(1).

45. MJCR 11-2(2).

staff, the parties to a cause, persons providing supervision or having custody of the child, and "any other person having a legitimate interest in the operation of the juvenile court or in the child." Present or prospective employers and the military services are specifically excluded from the latter category.[46]

Provisions relating to the actual sealing of delinquency records are the heart of the Article. The court *shall* order sealing upon the occurrence of one of the following three contingencies:[47] (1) the child reaches age 21,[48] (2) the cause is dismissed,[49] or (3) the court expunges an adjudication of delinquency.[50] In addition to mandatory sealing, the juvenile court may, in its discretion, order sealing in *any* delinquency cause where the youth is not subject to either an outstanding dispositional order or the Youth Conservation Commission.[51] While the court may hold a hearing to determine if "proper grounds" for sealing exist,[52] the Rules establish no guidelines for this discretionary sealing.[53] If one of the three contingencies for mandatory sealing occurs, or if the court otherwise decides to order sealing, as the case may be, the court will order all persons maintaining records concerning the delinquency causes of the child to remove such records from their files, seal them, and store them in a separate place set aside for sealed juvenile records. Subsequently, such persons are to notify the court of their compliance with its order.[54]

The proceedings covered in sealed records are "deemed never to have occurred" and the child, or any party to the cause, may reply accordingly. Persons maintaining sealed records are di-

46. MJCR 11-2(2)(d). "[R]esponsible representatives of public information media and persons conducting research relating to the juvenile court" are deemed to be persons "having a legitimate interest in the operation of the juvenile court," provided they agree not to publicize the identity of the child or his parents. *Id.*

47. MJCR 11-3(2) (emphasis added).

48. *See* text accompanying notes 57-72 *infra.*

49. *See* text accompanying notes 73 & 74 *infra.*

50. *See* text accompanying notes 75-78 *infra.*

51. MJCR 11-3(1).

52. MJCR 11-3(3).

53. "Discretionary" sealing, as used in this Note, refers to sealing the record of a child who does not come within the provisions requiring sealing. It does not mean sealing authorizing "discretionary" disclosure, since the Rules require that records, once sealed, are sealed totally and permanently, with no opportunity for subsequent disclosure to any person for any purpose. MJCR 11-2(1). *See* §§ III E and III F of the text. *See also* text accompanying notes 85-93 *infra.*

54. MJCR 11-3(3).

rected to reply to any inquiries, "'We have no record on the named individual.'"[55]

Finally, the court may, in its discretion, order the physical destruction of any sealed records. The grounds upon which such a decision may be based are not specified.[56]

C. MANDATORY AND DISCRETIONARY SEALING

1. *At Age 21*

The juvenile court is compelled to order sealing when the juvenile reaches 21 years of age. It has been suggested that sealing be made only if the child petitions the court to do so.[57] This, it is claimed, would give the youth an active role in the sealing of his record, which would result in increased awareness of his officially rehabilitated status, which would in turn give him a greater determination to refrain from unlawful behavior.[58] But while a petition might be such an added stimulus to those who take advantage of it, there may well be many ex-offenders who, because of timidity, uncertainty or ignorance would not present themselves to the court afresh, even for such a salutary purpose. By requiring the *automatic* sealing of records, Article 11 has the advantage of reaching the records of this group. Moreover, those offenders whose self-confidence and initiative are so lacking as to preclude their going to the courts on their own are perhaps in even greater need of sealing than those who would petition.[59] Finally, it would seem that the advantages of requiring a petition could be secured without the petition by informing the youth at his dispositional hearing that his record will be sealed upon his reaching age 21, and then informing him of that fact when the record is actually sealed.[60]

The primary argument in favor of mandatory sealing (whether automatically or by petition) is that it allows *every* child to start his adult life with a clear record[61] and prevents

55. MJCR 11-3(4).

56. MJCR 11-4. In view of the fact that sealing unconditionally bars subsequent disclosure, there seems to be no practical reason to delay destruction; or, for that matter, no reason why the intermediate step of sealing is necessary at all.

57. *See* Gough, *supra* note 11, at 185-86.

58. *Id.*

59. *See* text accompanying note 12 *supra*, and sources cited therein.

60. *See* Note, *supra* note 18, at 801. *Cf.* Gough, *supra* note 11, at 185.

61. Gough, *supra* note 38, at 120.

the inconsistent application of discretionary guidelines by various judges. Every juvenile is thus deemed entitled to have his record sealed regardless of conduct engaged in before his eighteenth birthday, the point at which juvenile court jurisdiction ceases.[62]

The typical discretionary sealing statute permits sealing only when pursuant to the court's determination that the child has satisfactorily rehabilitated.[63] The argument in favor of this approach is that the privilege is extended only to those juveniles who "deserve" it; juveniles who are not rehabilitated cannot take advantage of the protection that sealing offers.[64]

Certainly the rehabilitative process is an imperfect one, and under the Rules some juveniles who are unable or unwilling to lead lawful lives will have their records sealed. This fact, however, must be tempered with three observations. First, the public interest may dictate that the opportunity to protect those juveniles capable of full rehabilitation outweighs the risk of also protecting those who are incapable.[65] Second, the argument in favor of wholly discretionary sealing tends to view sealing as a reward, and to overlook its potential as a rehabilitative device.[66] Third, any record arising between the cessation of juvenile court jurisdiction at age 18 and the time of sealing at age 21 will be a criminal one, and hence will not be subject to sealing.[67] Thus, when a juvenile has his record sealed at age 21, he has concluded a three-year period during which any offenses he may have committed are a matter of public record. It may convincingly be argued that, at age 21, the immediately preceding three years are a more reliable index of the youth's future behavior than are the first 18 years.[68] The implicit three-year in-

62. *See* MINN. STAT. §§ 260.111 & 260.015(2) (1967).

63. *See, e.g.*, UTAH CODE ANN. § 55-10-117 (Supp. 1969). An additional and somewhat synonymous condition is that the offender must not have been convicted of a crime involving moral turpitude. *Id.*

64. *See* Gough, *The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status*, 1966 WASH. U.L.Q. 147, 184.

65. Such a determination is not dissimilar to Blackstone's familiar admonition, "[I]t is better that ten guilty persons escape than that one innocent suffer." 4 BLACKSTONE, COMMENTARIES *358.

66. *See* text accompanying notes 10-13 and 29-33 *supra*.

67. Furthermore, whenever the juvenile court refers the child to a criminal court for prosecution, juvenile court jurisdiction ceases and the matter is not subject to sealing, regardless of the offender's age. *See generally* MJCR 8-7.

68. *See* text accompanying notes 30-33 *supra*. *See generally* Gough, *supra* note 64, at 181-82.

terval prior to sealing should allay most fears of those who oppose mandatory sealing because of its indiscriminate inclusion of all juvenile records. The public policy in favor of encouraging rehabilitation is then likely to favor the mandatory provisions of the Rules.

A common provision in juvenile sealing statutes in other states requires the juvenile to refrain from unlawful conduct for a certain period of time, generally one to five years, before he becomes eligible for sealing.[69] The major difference between this and the three-year period implicit in the Rules is that, under the Rules, a criminal offense between the ages of 18 and 21 will not prevent sealing of the juvenile record. The rationale behind the "good behavior period" requirement is that the juvenile whose record is to be sealed must first demonstrate that he is capable of living lawfully on his own, without need of supervision.[70] Furthermore, the good behavior requirement may act as a deterrent by threatening the youth with forfeiture of the sealing privilege should he reoffend.

However, the good behavior requirement, while equitable on its face, can be quite destructive of the ends of rehabilitation. A conviction of drunkenness or breach of the peace, while considered minor by criminal standards, is nonetheless a criminal conviction. Keeping open a juvenile offender's record on this basis seems ill designed to encourage rehabilitation, as well as being a weighty penalty imposed in addition to the statutory one. Imposition of a good behavior requirement, like the wholly discretionary sealing provisions, also tends to emphasize the reward theory of sealing at the expense of the rehabilitative process.[71]

The Rules do not ignore the offense altogether; it becomes part of a criminal record and therefore, employers or prospective employers may take it into consideration. But the offender would not be held to account for his entire juvenile record merely because of a relatively minor infraction between ages 18 and 21. More serious offenses, such as felonies, are quite likely to be their own warning signals to the prospective employer, irrespective of any juvenile record the felon might have.

However, if a juvenile is subject to a dispositional order re-

69. *See, e.g.*, ARIZ. REV. STAT. ANN. § 8-238 (1956) (two years). This requirement is usually imposed in addition to a more general one requiring "satisfactory rehabilitation."

70. Gough, *supra* note 64, at 187.

71. *See* text accompanying note 66 *supra*.

quiring confinement until his twenty-first birthday, he is eligible for sealing simultaneous with his release. In this event, he would not have had an opportunity since age 18 to demonstrate his potential for rehabilitation,[72] nor would there have been a period during which any unlawful behavior could be entered as part of his criminal record. Under these circumstances, the balance would seem to swing in favor of withholding sealing for a period of time, such as the usual three-year period. This could be enacted by amending the Rules to require sealing at age 21, or three years following release from confinement, whichever is later.

2. *Upon Dismissal of the Cause*

Whenever the court dismisses a delinquency cause for lack of jurisdiction or failure of proof, sealing of the records of the particular cause is mandatory.[73] This provision would seem to allow little ground for dispute. When dismissal is due to a lack of jurisdiction, the required sealing of any records of the cause that have theretofore accumulated merely eliminates records of a cause that did not properly belong in the juvenile court initially. Likewise, if the record is considered an unnecessary burden for former delinquents, it must a fortiori be such for one who is not adjudicated delinquent.[74]

3. *Expungement of Delinquency*

The third occasion for mandatory sealing arises when the court expunges an adjudication of delinquency in the cause.[75]

72. *See* text accompanying note 68 *supra.*

73. MJCR 11-3(2). For a discussion of standards of proof in delinquency causes, *see* Note, *Standards of Proof and Admissibility in Juvenile Court Proceedings*, 54 MINN. L. REV. 362, 371 (1969).

74. The present wording reflects an amendment of September, 1969. Previously, sealing was required when the court dismissed the cause "for any reason," and the amendment removes one situation from the requirement of mandatory sealing. In a delinquency cause, where the court is satisfied that the delinquency has been proven beyond a reasonable doubt, it may order an interim disposition without an adjudication of delinquency, and at the conclusion of the interim disposition period, or prior thereto, may find that further supervision is unnecessary, and dismiss. MJCR 5-4(1)(b)(ii)(bb). Since dismissal would be for reasons other than lack of jurisdiction or failure of proof, sealing apparently is no longer required in such a situation. Presumably, however, discretionary sealing would be available. *See* MJCR 11-3(1).

75. MJCR 11-3(2)(c). Expungement has been defined as "a legislative provision for the eradication of a record of . . . adjudication[;] . . . a process of erasing the legal event of" adjudication. Gough, *supra* note 64, at 149.

Prior to promulgation of the Rules, the court had statutory discretion to expunge the adjudication at any time without affecting the rest of the record.[76] Now, however, it would seem that expungement of the adjudication is no longer a separate entity, since sealing of the entire record must follow.

This is an unnecessary provision at best, and perhaps an unfortunate one as well. The court can order sealing in delinquency causes virtually whenever it wishes.[77] It is therefore difficult to envision a situation where the court would now bother to expunge, since sealing must follow immediately thereafter. At worst, mandatory sealing upon expungement forecloses an opportunity for the court, in effect, to seal the adjudication while keeping available the rest of the record, such as previous adjudications and dispositions, and social and medical reports. The option would have been a valuable one where the court wished to aid the youth in gaining employment by expunging the adjudication of delinquency, yet also wished to keep the record open for consideration at a future dispositional hearing should the juvenile reoffend.[78] This option was apparently deemed an undesirable one by the drafters of the Rules, presumably because it was felt that a record must be sealed completely. But such an approach overlooks the possibility that the court, faced now with an all-or-nothing choice, might well decide not to seal at all, a decision which would clearly be to the detriment of the child and against the general policy of Article 11.

Thus, the Rules unfortunately abolish expungement per se by providing that it become merely another name for sealing. Such a procedure unduly limits the options available to the court and might well cause the child to bear the burden of an unsealed record where expungement of the adjudication would have been both possible and desirable.

4. *Discretionary Sealing*

As previously noted,[79] the usual basis of discretionary sealing in other states is a showing of rehabilitation satisfactory to the court, usually coupled with a "good behavior period" during which the offender must be free of further unlawful conduct.

76. MINN. STAT. § 260.185(2) (1967).
77. *See* text accompanying notes 79-88 *infra.*
78. Sealed records are not subsequently available to a sentencing court, whether juvenile or criminal. MJCR 11-2(1). *See* text accompanying notes 113-122 *infra.*
79. *See* text accompanying note 63 *supra.*

However, the Rules, unlike comparable provisions in other states, provide for a period during which records *may* be sealed, followed by a point, *i.e.*, age 21, at which they *must* be sealed. The fact that sealing is assured eventually must necessarily influence the court's decision of whether to seal prior to age 21, since a refusal to seal merely postpones the event; it does not deny it altogether. Thus, it would seem that the juvenile must make a convincing case when requesting discretionary sealing, because he is in effect saying that a privilege which will be his at age 21 should be given to him before that time.

The Rules themselves are of no assistance in determining what factors should be taken into consideration in making the decision. A hearing may be held to decide whether there are "proper grounds" for discretionary sealing,[80] but no clue is given as to what "proper grounds" are or should be. Several factors may, however, be suggested.

First, the facts should show a convincing likelihood that the child will not offend again. This requirement is derived from two considerations. It preserves the widely accepted belief that the proper disposition of an offender, juvenile or criminal, depends to a great extent on a knowledge of his prior record and dispositions.[81] Since the juvenile court is precluded from using sealed records,[82] a child who reappears before the juvenile court on a new offense following the sealing of his records would be deprived of these considerations. To the extent that the subsequent disposition is thereby not suited to the child, both the child and society suffer.[83] In addition, a requirement that future misconduct be highly unlikely recognizes the fact that police records, as well as court records, are to be sealed.[84] When the records are sealed, police are precluded from using information contained therein in future investigations. Thus, to the

80. MJCR 11-3(3).

81. *See generally* M. PAULSEN & S. KADISH, CRIMINAL LAW AND ITS PROCESSES 146-68 (1962).

82. *See* note 78 *supra.*

83. This consideration extends not only to proper disposition, but also to whether the child should be referred for prosecution, since the record of the child is included as a relevant criterion in determining whether reference is proper. MJCR 8-7(2)(c). *See generally,* Note, *Reference for Prosecution in Juvenile Court Proceedings,* 54 MINN. L. REV. 389 (1969).

84. MJCR 11-1(2)(b). *But see* text accompanying notes 92 & 93 *infra.*

extent that crime detection is unreasonably impaired, the public interest would suffer.[85]

Second, it may be advisable to impose a "good behavior period" of three years as a prerequisite to the granting of discretionary sealing. While such a requirement is unnecessary and perhaps inadvisable where mandatory sealing is concerned,[86] the situation differs in the discretionary sealing process in that there is no three-year period comparable to the 18-to-21 age span during which the youth's unlawful activities are a matter of public record.[87] For reasons heretofore indicated,[88] it would not appear advisable to seal the record before the youth has been on his own for an appreciable length of time.

D. Sealing of Police Records

The Rules extend sealing to police records by defining records to include "all documents, except traffic offense records, maintained by any representative of the state or state agency, except the Youth Conservation Commission, insofar as they relate to the apprehension, detention, adjudication or disposition of a child who is the subject of a juvenile court cause."[89] "Representative of the state" includes, *inter alia*, the county attorney and his staff, peace officers and any other employee of the state or any political subdivision thereof.[90]

By its terms, however, Article 11 applies only to those juveniles who are the *subjects* of juvenile court causes.[91] Juveniles for whom no petition is filed following police contact are not subjects of a cause and thus cannot have their records sealed. The reason for this serious omission apparently lies in the fact that as rules of court, these Rules lack statutory power, and therefore can apply only to the records of a child who comes in contact with the court.[92] Moreover, a question exists as to

85. *See* Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 Harv. L. Rev. 775, 785 (1966).

86. *See* text accompanying note 71 *supra*.

87. If an ex-offender applies for discretionary sealing between the ages of 18 and 21, any record since his eighteenth birthday is public, but this necessarily covers less than three years. *See* text accompanying notes 67 & 68 *supra*.

88. *See* text accompanying note 72 *supra*.

89. MJCR 11-1(2)(b).

90. MJCR 1-2(r).

91. MJCR 11-1(2)(b).

92. Apparently this reason also underlies the exception of Youth Conservation Commission (YCC) records from the otherwise sweeping definition of records found in MJCR 11-1(2)(b). The YCC was created

whether the Rules can in fact reach police records of those juveniles who are subjects of juvenile court causes. By the terms of rule 11-1(2)(b) such reach is possible. But whether the unilateral adoption of these rules by juvenile courts is sufficient authority to extend sealing to police records is untested.[93]

The necessity of including police records within the comprehension of a sealing scheme cannot be overemphasized.[94] In fact, from the individual's point of view, sealing of the police record can be more important as a rehabilitative tool than the sealing of the court record.[95] The fact that employers often have little difficulty in gaining access to police records, and that these records seldom reflect the subsequent disposition of the child has been noted.[96] The fact gains more significance when one considers that only about half of recorded police contacts are referred to the juvenile court.[97] The other half are handled within the police department itself,[98] by releasing the child

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in 1947, and any delinquent may be committed to its custody. The juvenile court can not consign a delinquent directly to incarceration but must transfer custody to the YCC, which then decides the question of subsequent disposition. *See generally* Pirsig, *Procedural Aspects of the Youth Conservation Act*, 32 MINN. L. REV. 471 (1948).

93. *Cf.* Note, *Minnesota Juvenile Court Rules: Brightening One World for Juveniles*, 54 MINN. L. REV. 303 (1969). The police are not likely to cooperate any more than necessary where sealing of juvenile records is concerned. Though voluntary destruction of police records by the police themselves is not unknown, such practices are uncommon and depend upon individual departments. Note, *supra* note 85, at 787. As a general rule police oppose automatic and unconditional destruction where age is the sole determinant factor. G. O'CONNOR & N. WATSON, JUVENILE DELINQUENCY AND YOUTH CRIME: THE POLICE ROLE 62-63 (1965).

94. 2 CALIFORNIA GOVERNOR'S COMM'N, *supra* note 24, at 100.

> The decision to arrest or not to arrest is, in many instances, completely in [the beat patrolman's] hands, and his decision, as well as his use of investigative skills, can be one of the most important steps in the entire juvenile control process. A poor approach or an unwise arrest or detention decision at this point may nullify any future corrective action as well as to vitally affect the minor's later behavior. *Id.*

95. *See id.* at 110.

96. *See* text accompanying notes 22-25 *supra*.

97. *See* Note, *supra* note 93, at 776; 2 CALIFORNIA GOVERNOR'S COMM'N, *supra* note 24, at 101; TASK FORCE, *supra* note 1, at 12. In 1968, 56.4 percent of juveniles taken into custody by police in rural areas were referred to the juvenile court. In cities with a population less than 10,000, 44.3 percent were so referred. UNIFORM CRIME REPORTS—1968, at 106.

98. Occasionally, juveniles may be referred to various public and private agencies, such as religious or public welfare organizations, family service bureaus or schools, but such referrals are infrequent.

to his parents,[99] or by placing him under informal police supervision for several months[100] or by referring him to the juvenile bureau of the police department, where he is usually released after a "hearing" consisting of a confession and a stiff lecture.[101] Records are generally kept of all steps in these procedures.[102]

The effect of these Rules on police records is as yet unknown. However, if it appears that an appreciable portion of police records of subjects of juvenile court causes remains unsealed despite the Rules, the sealing requirements should be strengthened through statutory enactment. In any event, statutory enactment is strongly urged so that those juveniles whose contact is never extended to the juvenile court may also be afforded the protection of sealing.

E. "The Proceedings Are Deemed Never to Have Occurred."

The protection afforded by sealing would be illusory if the employer could force the juvenile to disclose that which the law prohibits the employer from discovering on his own. To prevent pressure from being brought to bear on the child to disclose his record, proceedings covered by sealed records are deemed never to have occurred, and the child, the court or any state or local agency may reply accordingly.[103] Courts and agencies are directed to reply to any inquiry concerning the juvenile, " 'We have no record on the named individual,' " or words to that effect.[104]

However, problems are bound to arise when the law provides, in effect, that what has happened has not happened. A valid theoretical argument in support of the provision could be made when the alternative of not having the provision is considered.

See Uniform Crime Reports—1968 at 106; 2 California Governor's Comm'n, *supra* note 24, at 101.

99. 2 California Governor's Comm'n, *supra* note 24, at 101; Note, *supra* note 85, at 777.

100. 2 California Governor's Comm'n, *supra* note 24, at 101.

101. Note, *supra* note 85, at 777-81. Refusal to confess usually results in referral to the juvenile court. *Id.* at 781.

102. *Id.* at 784. *See* G. O'Connor & N. Watson, *supra* note 93, at 62.

103. MJCR 11-3(4). Such a procedure is recommended in Burns & Stern, *The Prevention of Juvenile Delinquency*, in Task Force *supra* note 1, at 353, 385. Three states include a similar provision in their sealing statutes. Cal. Welf. & Inst'ns Code § 781 (West Supp. 1966); Utah Code Ann. § 55-10-117 (Supp. 1969); Vt. Stat. Ann. tit. 33, § 665 (Supp. 1969).

104. MJCR 11-3(4).

If the individual could be required to disclose the content of sealed records, the purpose of sealing would be circumvented and the sealing process would quickly become a form without substance.[105] Moreover, if all the juvenile could do is reply, in effect, "No comment," when asked about his record, the employer will readily infer that a record does exist. Therefore, if the protection of sealing is to be made a reality, the juvenile must be allowed to deny that the proceedings ever took place.

The Model Annulment of Conviction Act,[106] designed for convictions but applicable in theory to juvenile court proceedings, meets this problem by restricting inquiries that the employer may make. He may ask only, "Have you ever been arrested for or convicted of a crime which has not been annulled by a court?"[107] This provision would, however, present administrative problems. It could not constitutionally apply to employers outside the state. The youth's remedies would be unwieldy and inappropriate since courts are generally reluctant to enforce employment contracts, and a complaint procedure similar to the type now used in discrimination and civil rights cases would be cumbersome and, at best, a piecemeal solution to the problem.

Under the Rules, a problem does arise when the juvenile denies the existence of a record, but is required to account, perhaps on an employment application, for a period of time in fact spent in custody. No satisfactory answer to this dilemma has been proposed. The ex-offender could, of course, simply list his activities during the time in question under the rubric of "unemployed," but this response is unsatisfactory for several reasons. It may be an obstacle to securing employment. It may arouse suspicion if used to account for a period during which a child would normally be in school. And most importantly, it ignores any skills or education the child has gained while in custody. A solution can be suggested, however. When the juvenile is in custody, he is under the authority of the state, and receives education or training to some extent. Since the purpose of the training is to provide skills useful in future employment, it may be desirable to allow the individual to list those skills as gained in the "employment" of the state. This would

105. This is not to imply that the juvenile should never be allowed to disclose the record if he so chooses. *See* § III G of the text.

106. "An Act to Authorize Courts to Annul a Record of Conviction for Certain Purposes," in *Annulment of a Conviction of Crime*, 8 CRIME & DELINQ. 97, 100 (1962).

107. *Id.*

seem to reflect as closely as possible the actual situation without revealing custody. The answer is not perfect, of course. When the child is in custody during his normal schooling years, for instance, such a response may arouse the same suspicion as "unemployed." However, the child must be allowed to attribute to the period of custody an activity or an education most like that actually experienced if the basic protections of sealing are to be fully realized.

F. Use of the Record in Subsequent Judicial Proceedings

Sealed records are not available for use in subsequent judicial proceedings.[108] This exclusion is based in part upon a statutory provision[109] prohibiting evidence given by the subject of a juvenile court cause, or his disposition, from being admissible in evidence against him in any "case or proceeding" in a non-juvenile court. The Pennsylvania Supreme Court, under a similar statute, however, has held that the use of juvenile court records in a presentence investigation following an ex-juvenile offender's guilty plea in a criminal trial is proper.[110] The court reasoned that such information was not used in "evidence" against the accused, since it followed a guilty plea and was used to determine a proper sentence. The court relied on *Williams v. New York*[111] and similar cases which stress the importance of full knowledge of the offender's background in setting an appropriate disposition.[112]

When the ex-juvenile offender appears before a criminal court after his twenty-first birthday, his juvenile record has already been sealed.[113] However, any criminal proceedings since age 18 are not within the jurisdiction of the juvenile court[114] and thus are freely available for presentence investigation. Therefore, a person over 21 who has not offended since age 18 is necessarily a first offender for purposes of sentencing since the court

108. *See* note 78 *supra.*
109. Minn. Stat. § 260.211(1) (1967).
110. Commonwealth *ex rel.* Hendrickson v. Meyers, 393 Pa. 224, 144 A.2d 367 (1958).
111. 337 U.S. 241 (1949).
112. The decision in *Hendrickson* has been criticized on the grounds that the enactment of the statute forbidding use of juvenile court information in evidence in a subsequent "case or proceeding" is an indication of the unreliable nature of these records. Rappeport, *Some Legal Aspects of Juvenile Court Proceedings*, 46 Va. L. Rev. 908, 921-23 (1960).
113. *See* MJCR 11-3(2)(a).
114. Minn. Stat. § 260.111(1) (1967).

has no knowledge of, nor access to, the convicted defendant's juvenile record. Such a result does not seem manifestly unfair, since the convict will have spent at least three years without offending, and to sentence him as a first offender would not be a gross departure from the philosophy behind increased sentences for multiple offenders. To the extent the individual has offended since his eighteenth birthday, however, he would be subject to any applicable multiple offender statute[115] or to the discretion of the sentencing court in imposing a longer sentence within the statutory limits.[116]

Advocates of full disclosure of sealed records to a sentencing court argue that the purpose of sealing is to aid in the rehabilitation of the offender, and that by his new crime the offender has demonstrated his failure to rehabilitate.[117] This attitude implies that rehabilitation is an all-or-nothing proposition; one who has not reformed completely has not reformed at all. But the fact that one offends after the record has been sealed does not indicate that the entire rehabilitative process, including the sealing, has been a complete failure. The more offenses, or the more serious an offense, he commits, of course, the greater is the permissible inference that the rehabilitative process has in fact failed. However, as he reoffends, his criminal record lengthens. The court can and should consider this public record in passing sentence.

G. Subsequent Disclosure of the Record by the Juvenile

After a juvenile record has been sealed, the blanket prohibition on disclosure[118] necessarily precludes the child himself from subsequently causing his record to be disclosed, for whatever reason. Such a provision is designed to prevent pressure from being brought to bear on the child by those who seek to have the record disclosed. If the ex-offender has the power to cause disclosure, prospective employers could make disclosure a condition of employment, thus defeating the rehabilitative purpose of sealing. If the ex-offender is unable to cause disclosure, employer pressure will be foredoomed and consequently, will not be brought.

Such an argument, however, overlooks several factors. First,

115. *See, e.g.*, Minn. Stat. § 609.155 (1967).
116. *Cf.* Model Penal Code § 7.01 (Proposed Official Draft, 1962).
117. *See, e.g., Annulment of a Conviction of Crime*, 8 Crime & Delinq. 97, 99-100 (1962).
118. MJCR 11-2(1).

the Rules permit the juvenile to deny the existence of a record altogether.[119] The prospective employer is thus usually unable to tell from applications or normal interviews who actually has been involved in juvenile proceedings and who has not. If he is to bring pressure on any applicant to cause disclosure of a record, he must bring pressure on all applicants, including those with no records in fact. Whether an employer would be willing to expend the time and money necessary to confront each applicant in an effort to compel him to reveal a record which may or may not exist is questionable. In addition, the employer would necessarily be implying that he does not believe the applicant's denial, and may well conclude that such a tactic would give an unfavorable impression to applicants with no record in fact, perhaps causing them to withdraw their applications and to seek employment elsewhere.

The absolute nondisclosure theory also holds that if juveniles could cause disclosure of their records, waiver provisions by which they agree to cause disclosure could become common on application forms as a condition of employment. However, an applicant who denies that he has a record would not normally sign a waiver allowing disclosure of a record; rather, he would react as anyone with no record in fact would react—by ignoring the waiver entirely. In so doing, he would be protected by the Rules, which deem the proceedings never to have occurred.[120] Therefore, the inclusion of such a waiver by employers would seem unlikely. However, should an employer seek to circumvent this dilemma by *requiring* every applicant to sign a waiver, the courts should simply refuse to honor such "waivers."[121] Before allowing disclosure, the court should require a letter from the child to the court (or, whenever possible, a personal appearance by the child) indicating to whom the record is to be revealed, and, perhaps, for what purpose.[122] The burden of securing disclosure would thus be set so high that it would be impractical for employers to require applicants to follow this procedure *when the identity of those who in fact have records is unknown.* At the same time, the burden upon the individual is slight in comparison with the benefit of having his record disclosed.

Furthermore, a procedure allowing the individual to cause

119. MJCR 11-3(4). *See* text accompanying note 103 *supra.*
120. MJCR 11-3(4).
121. *See* Burns & Stern, *supra* note 103, at 385.
122. *See* VT. STAT. ANN. tit. 33, § 665 (Supp. 1969).

disclosure might in fact serve as a beneficial "safety valve" to preserve the rehabilitative ideal. There are two situations where such a procedure could be a positive force: when the employer has *independent* knowledge that the individual has had contact with the juvenile court, or when the individual himself voluntarily admits such past contact.

It is not unlikely that in many communities, especially in smaller communities, a child's contact with the law may become a matter of quasi-public knowledge.[123] Even where these contacts are quite minor,[124] perhaps not even culminating in an adjudication of delinquency, the distortions of gossip or boasts,[125] incubated by time, may result in an exaggerated version of the facts. If in the future, a local employer refuses to hire the individual on the basis of this "record," the child is without recourse to provide factual information of his past. He must remain at the mercy of the public's conception of his behavior.

A second situation where disclosure would be beneficial to the juvenile exists when he voluntarily admits the existence of such a record to prospective employers or to recruiting personnel from the military services. It is quite possible that, when asked about the existence of a juvenile record, the individual would admit it despite the fact that he is not bound to do so.[126] He may do so because, out of simple ignorance of the Rules' protection, he believes disclosure is required. He may do so because he wishes to be straightforward with the employer and may not want to risk the chance that the employer may find out from other, possibly distorted sources. He may become confused over what to indicate as his activities during the time spent in custody.[127] He may make an inadvertent

123. *See* Lemert, *The Juvenile Court—Quest and Realities*, in TASK FORCE, *supra* note 1, at 91, 93; Brucker, *The Right to Know About Juvenile Delinquents*, 15 JUV. CT. JUDGES J. 16, 18 (Summer, 1964).

124. Offenses committed by delinquents in nonmetropolitan areas tend to be not only less frequent but less serious than those in urban areas. Polk, *Delinquency and Community Action in Nonmetropolitan Areas*, in TASK FORCE, *supra* note 1, at 343.

125. Lawlessness can be a desired image or a source of status among peers to some delinquents. Wolfgang, *The Culture of Youth*, in TASK FORCE, *supra* note 1, at 145, 149-50; Freedman & Cohen, *Delinquency, Employment and Youth Development*, in READINGS IN DELINQUENCY AND TREATMENT 17, 20 (R. Schasre & J. Wallach eds. 1965). Under such circumstances, boasting and exaggeration would be expected.

126. MJCR 11-3(4).

127. *See* pp. 451-52 *supra*.

reference to his record or to related matters that indicate past contact with the juvenile court.

In any of these situations—whether the employer has independent knowledge of, or the juvenile for various reasons reveals, the existence of past delinquent activities—Article 11 allows the juvenile no means of substantiating the facts so that the actual extent of the activity and contact can be made known. Thus the employer cannot know the actual extent of the juvenile's conduct, even when the misconduct has been slight.

Therefore, it is submitted that an exception to absolute nondisclosure be made in favor of the individual. Such a provision, perhaps modeled on the statutes of California, Utah or Vermont,[128] would add needed flexibility to allow the fullest protection to the individual and to encourage the greatest realization of the rehabilitative ideal.[129]

IV. CONCLUSION

The sealing of records can undoubtedly benefit both the child and society by removing the practical barriers to employment and by symbolizing society's willingness to allow the ex-delinquent to start afresh. Generally, the Minnesota Rules embody a thoughtful and thorough procedure designed to insure maximum benefit to the child in this respect. However, several specific changes should be made to complete this procedure:

1. Rules 11-3(1) and 11-3(2) should be amended to provide for sealing of records in neglect and dependency causes.
2. Rule 11-3(2)(a) should be amended to provide mandatory sealing at age 21, *or* three years following release from confinement, whichever is later.
3. Rule 11-3(2)(c), providing that sealing shall follow expungement, should itself be expunged.
4. An effective means of including police records within the ambit of sealing should be devised. Statutory enactment of Article 11 would seem to be the most direct means of effecting this protection.
5. Rule 11-2(1) should be amended to provide that the child who was the subject of the cause may cause disclosure of sealed records.

128. *See* note 34 *supra.*

129. Such a provision would necessitate a period of time between sealing and destruction under MJCR 11-4. Ten years is suggested. If the juvenile does not need or desire disclosure by that time, it is unlikely that he ever will.